IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Crl.Rev.Pet.No. 99 of 2007()

CRA.67/1996 of SESSIONS COURT, PALAKKAD
CC.133/1991 of JUDL.MAGISTRATE OF FIRST CLASS COURT, CHITTUR

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REVN. PETITIONER:

RAJAN R., S/O.RAMAN BOYAN,
KOZHINJAMPARA, CHITTUR.
(CONVICT NO.5491,
CENTRAL PRISON, VIYYUR)

BY ADV. SRI.C.T.JESTIN(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
THE CIRCLE INSPECTOR OF POLICE
CHITTUR POLICE STATION IN CRIME NO.33/96.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 99 OF 2007

Dated this the 30th day of October, 2007

O R D E R

The revision petitioner, who was the sole accused in C.C.No.133/91 on the file of JFCM, Chittur for offences punishable under sections 457, 380 and 461 IPC, challenges the conviction entered and the sentence passed against him by the courts below for the said offences.

2. The case of the prosecution can be summarized as follows:-

On 17.3.1986 at about 1.00 a.m. the accused entered into House No.UP 220 belonging to PW1 Kuppuswami Gaunder and situated at Kuppanda Goundannur in Ozhalapati village of Chittur Taluk within the jurisdiction of Kozhinjampara Police Station and committed theft of 34 sovereigns of gold ornaments worth Rs.66,000/- after gaining entry into the said house through the roof tiles. The gold ornaments were kept inside a steel almirah which was opened by the accused using the key. The accused has thereby committed offences punishable under sections 457, 380 and 461 IPC.

3. On the side of the prosecution 18 witnesses were examined as PWs 1 to 18 and 5 documents were got marked as Exts.P1 to P5 and 5 material objects were got marked as MOs 1 to 5.

4. After the close of the prosecution evidence the accused was questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. The accused did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 30.3.1996 found the revision petitioner guilty of the offences and sentenced him to rigorous imprisonment for one year under section 457 IPC, rigorous imprisonment for two years under section 380 IPC and rigorous imprisonment for one year under section 461 IPC. The sentences were directed to run concurrently.

6. Aggrieved by the said judgment, the revision petitioner preferred an appeal before the Sessions Court, Palakkad as Crl.Appeal No.67/96. As per judgment dated 11.7.01 the Additional Sessions Judge dismissed the appeal confirming the

conviction entered and the sentence passed against the revision petitioner. Hence this revision.

7. I heard Advocate Sri.C.T.Jestin, the learned counsel appearing for the revision petitioner on State Brief and Advocate Sri.K.S.Sivakumar, the learned Public Prosecutor who defended the State.

8. The only question which arises for consideration in this appeal is as to whether the conviction entered and the sentence passed against the revision petitioner are sustainable or not?

The Point :

9. The learned counsel appearing for the revision petitioner made the following submissions before me in support of the revision:-

Eventhough the grievance of the complainant in Ext.P1 F.I.Statement is that he lost 68 sovereigns of gold ornaments, what has been seized by the police is only 34 sovereigns. The police had obtained 10.10 sovereigns of gold ornaments from that house itself. The person from whom the gold ornaments were recovered has not been examined. He was not even a charge witness. Eventhough the Prosecutor in charge of the case has filed a petition under section 311 Cr.P.C. to examine the said

jeweller, he could not be traced and, therefore, he could not be examined. PW12, who is an attester to Ext.P4 seizure mahazar pertaining to the gold ornaments, has stated that the accused was not present when the seizure was effected. If so, it does not fall under section 27 of the Evidence Act. The balance gold has not been recovered by the police. Merely because, the fingerprints of the accused taken after more than 4 years of the occurrence were found tallying with the finger prints on the container in which the gold ornaments were kept, it cannot be straightaway conclude that it was the accused who had committed theft of the gold ornaments. It was overlooking all these vital aspects the courts below have recorded the conviction against the revision petitioner.

10. I am afraid that I cannot agree with the above submissions. PW1(Kuppuswami Gounder) is the first informant from whose house at Kuppanda Goundannur in Ozhalapati village that the gold ornaments were stolen. PW2 (Annalakshmi) is the wife of PW1. PW3(Renuka) is the daughter of PWs 1 and 2. PW4(Kanthaswami) is an attester to Ext.P2 scene mahazar. PW5 (Selvakrishnaswami) was given up by the prosecution. PW6 (Kuppammal) is the mother-in-law of the accused. She was cited by the prosecution to prove that upon noticing gold ear studs in

the ears of her daughter when she questioned her, the latter told her that they were presented to her by her husband. But this witness turned hostile to the prosecution. PW7(N.Raveendran) is the Departmental photographer who took the photograph of the finger prints found on the jewellery box from which the ornaments were stolen. PW8(Dharmalingam) is the husband of PW3, who is the daughter of PWs 1 and 2. PW9(Cleatus Pereirra) is a fingerprint expert who had visited the scene of occurrence along with the police party. PW10 (Thankarajan Asari) is the tester inspector who took the chance fingerprints from the jewellery box found in the steel almirah of the house of PWs 1 and 2 and he filed Ext.P3 report as per which the chance fingerprint found on the jewellery box tallied with the fingerprint of the accused. PW11 (A.P.George) was the Circle Inspector who conducted the investigation. PW12(Kumaraswami) is an attester to Ext.P4 seizure mahazar. PW13(Narayanankutty) is the Circle Inspector who conducted the investigation. He visited the scene of crime and prepared Ext.P2 scene mahazar. He seized MO1 series from the scene of occurrence. PW14 (Shanmughanesan) is another attester to Ext.P4 seizure mahazar. PW15(A.C.Haridas) was the Sub Inspector who recorded the F.I.Statement of PW1 on

18.3.1986. He registered Ext.P1 F.I.R. PW16(Thomas Manjooran) was the Circle Inspector who conducted the investigation for the period from 3.6.1988 to 5.6.1990. PW17 (Venugopalan) was the Circle Inspector who conducted the preliminary investigation from 13.10.1986 to 24.5.1988. Since he could not arrest the accused, the case was treated as an undetected case. PW18(K.R.Ramesan) was the Circle Inspector, Chittur who conducted the investigation from 19.11.1991 to 27.6.1992. It was on his report dated 31.3.1991 to the effect that the accused was absconding and it will not be possible to apprehend him in the near future that the court treated the case as undetected. Thereafter on 19.8.1991 the accused was arrested from Pollachi by one Satheesh Kumar, the Head Constable of Kozhinjampara Police Station and his police party. The accused was then produced before the Kozhinjampara Police Station. When interrogated the accused made a confession and revealed the fact that he had sold the gold ornaments in question in a jewellery shop at Raja Street, Coimbatore. He was then produced before the court. Thereafter, the accused was taken on police custody by filing proper petition before the court. Based on the confession made by the accused on 26.8.1991 the accused led

the police party to Coimbatore Raja Street at Big Bazar and pointed out at one Sathyanarayanan to whom he had sold the gold ornaments. The said Sathyanarayanan had admitted to the police party that the accused had sold the gold ornaments to him. MOs 2 to 5 gold ornaments were recovered under Ext.P4 seizure mahazar.

11. It is true that recovery of MOs 2 to 5 was made after 4 years of the occurrence. But then the accused was arrested only on 19.8.1991. It was thereafter that the recovery was made. Eventhough the owner of the jewellery shop was not examined, both PWs 12 and 14, who were the attesters to Ext.P4 seizure mahazar, did support the prosecution. Since the person from whom the ornaments were recovered was not a charge witness, the Public Prosecutor in charge of the case filed a petition under section 311 Cr.P.C. to examine him as a witness. Eventhough the said petition was allowed by the trial court, no summons could be served on him as he could not be traced out.

12. The alleged absence of the accused at the time of the recovery as spoken to by PW12 the attester to Ext.P4 mahazar cannot in any way militate against the case of the prosecution. It is not necessary that in order to attract section 27 of the Evidence

Act the accused should actually lead the police to the place of disposal of the property or the place of concealment of the weapon. It is enough if in the disclosure statement he conveys the whereabouts of the place of disposal of the valuables or the place of concealment of the weapon, etc. The law does not insist that besides making a disclosure statement, the accused should lead the police to the exact place and unearth the material objects and hand the same over to the police. If on the other hand, without making any disclosure statement, the accused were to lead the police to the place of disposal of the property or the place of concealment of the weapon and take out the same, it may not fall under section 27 of the Evidence Act but it may fall under section 8 of the Evidence Act as constituting a conduct. In the case on hand, that Ext.P4 a disclosure statement coupled with the conduct of the accused in leading the police party to the jeweller will squarely fall under section 27 of the Evidence Act.

13. The failure to recover the balance gold ornaments does not in any way falsify the prosecution case. It is true that MOs 2 to 5 were recovered after nearly 4 years of the occurrence. But then the accused could be apprehended only on 19.8.1991 which is 4 years after. No fixed time limit can be laid down to

determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies depending on the type of the stolen article and if it is of such a nature that it may not pass readily from hand to hand, a period of long retention of the article with the accused will not make the recovery suspect. The abscondance of the accused during the intervening period also may be relevant. See the decision ***Earabhadrappa Vs. State of Karnataka*** [AIR 1983 SC 446].

14. The non-examination of the jeweller also cannot be a ground to disbelieve the prosecution version. It is true that he was not a charge witness. It is also true that the Prosecutor in charge of the case had filed a petition to examine him by invoking section 311 Cr.P.C. In spite of earnest efforts the witness could not be traced out. But the attesters to Ext.P4 seizure mahazar have supported the prosecution.

15. PWs 1 and 2 had admittedly no difficulty in identifying MOs 2 to 5 as some of the gold ornaments stolen from their house. The recovery of these items on the strength of the confession made by the accused coupled with their identification

by PWs 1 and 2 renders adequate evidence justifying the conviction of the accused. Coupled with that there is also the fingerprint evidence connecting the accused with the offence. Both the courts below have marshalled the evidence to come to the right conclusion. The conviction was thus rightly recorded against the revision petitioner. The sentence imposed on him also cannot be said to be harsh or disproportionately excessive, having regard to the further fact that he is a habitual offender involved in several theft cases.

16. The result of the forgoing discussion is that the conviction entered and the sentence passed against the revision petitioner do not warrant any interference by this court and are accordingly confirmed.

Resultantly, this revision is dismissed.

(V. RAMKUMAR, JUDGE)

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V. RAMKUMAR, J.

Crl. R.P. No. 99 OF 2007

O R D E R

30th day of October, 2007